

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

PAVEL M. SHEVCHENKO,

Movant,

-vs-

UNITED STATES OF AMERICA,

Respondent.

No. 2:14-CR-0165-WFN-1

ORDER DENYING DEFENDANT'S
PETITION WITH THE RIGHT TO
REFILE

Before the Court is Mr. Shevchenko's Petition to Reconsider Petitioner's Sentence Pursuant to 18 U.S.C. §3553(a)(6) and in light of New Fast Track Program and the Second Chance Act in Pursuant to Title 18 U.S.C. §3621(a) and in Pursuant to Section 3624(b)(c)(2). (ECF No. 140). The Motion is submitted by Mr. Shevchenko, who is appearing *pro se* in these proceedings.

Mr. Shevchenko complains that the Bureau of Prison is denying his constitutional rights based on their interpretation of 18 U.S.C. § 3621 and 18 U.S.C. § 3624. Since this is a claim regarding the execution of his sentence rather than a problem with the imposition of the sentence, his claims appear to be suited for a motion pursuant 28 U.S.C. § 2241. *See Lopez v. Davis*, 531 U.S. 230, 236 (2001). Habeas claims pursuant to § 2241 should be filed in the district court with jurisdiction over the facility where Mr. Shevchenko is housed. Claims such as Mr. Shevchenko's are subject to several procedural hoops because Mr. Shevchenko must first pursue administrative remedies through the Bureau of Prisons as laid out in 28 C.F.R. §§ 542.10 to 542.19. Alternatively, Mr. Shevchenko may have intended to file a *Bivens* action alleging that federal government officers acted unconstitutionally under color of federal law. *Biven v. Six Unknown Federal Narcotics Agents*, 403 U.S. 388 (1971). Though the Court is unsure which vehicle Mr.

1 Shevchenko intends to pursue his claim, this Court does not have jurisdiction to hear Mr.
2 Shevchenko's claims in either case. Rather than directly transferring Mr. Shevchenko's
3 Petition to the proper jurisdiction, the Court will dismiss his Petition. This will allow Mr.
4 Shevchenko to reassess his approach and file the Petition in the proper jurisdiction. The
5 Court has reviewed the file and Movant's Motion and is fully informed. Accordingly,

6 **IT IS ORDERED** that Mr. Shevchenko's Petition to Reconsider Petitioner's
7 Sentence Pursuant to 18 U.S.C. § 3553(a)(6) and in light of New Fast Track Program and
8 the Second Chance Act in Pursuant to Title 18 U.S.C. § 3621(a) and in Pursuant to Section
9 3624(b)(c)(2), filed August 15, 2016, **ECF No. 140**, is **DENIED**. This should not hinder
10 Mr. Shevchenko's ability to file a similar motion in the court of jurisdiction for such
11 claims.

12 The District Court Executive is directed to file this Order and provide copies to
13 counsel and *pro se* Movant

14 **DATED** this 19th day of October, 2016.

15 s/ Wm. Fremming Nielsen

16 WM. FREMMING NIELSEN

17 SENIOR UNITED STATES DISTRICT JUDGE

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